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<u>Name</u>	<u>Company</u>	<u>Fax No.</u>	<u>Phone No.</u>
1. Examiner Andrea Valenti	USPTO	703-306-4195	703-305-3010

**FAX RECEIVED****OFFICIAL****From:** Michael S. GzybowskiDEC 16 2002**Date:** December 16, 2002**GROUP 3600**Re: 09/837,020Our Ref.:TKA0028

**Comments:** Attached is a Request for Reconsideration which we are filing by facsimile on December 16, 2002 in the above-identified patent application.

**Return To:** Pat Spsychalski**Total number of pages, including cover letter:** 7**A hard copy of this transmission**            **will be sent by regular mail**           **will be sent by overnight mail**  X   **will not be sent under separate cover**

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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group  
Art Unit: 3643  
  
Attorney  
Docket No.: TKA0028  
  
Applicant: Yasushi KOHNO et al.  
  
Invention: METHOD OF PREVENTING DEFECTIVE  
GERMINATION OR GROWTH OF PLANT  
  
Serial No: 09/837,020  
  
Filed: April 18, 2001  
  
Examiner: Andrea Valenti

Certificate Under 37 CFR 1.8(b)

I hereby certify that this correspondence is being  
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Office via facsimile on the date listed below.

on December 16, 2002

Michael S. Gzybowski

REQUEST FOR RECONSIDERATION

FAX RECEIVED

Assistant Commissioner for Patents  
Washington, D.C. 20231

OFFICIAL

DEC 16 2002

GROUP 3600

Sir:

The Official Action of September 30, 2002 has been thoroughly studied. Accordingly, the following remarks are believed to be sufficient to place the application into condition for allowance.

Claims 1-13 are pending in this application.

Claims 1-6 and 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,701,700 to Kohno et al. Skarpaas, *Population Viability Analysis for the Oyster Plant (Mertensia maritime) in the Oslofjord Region*.

Claims 7-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,701,700 to Kohno et al. "as applied to claim 1 above, and further in view of U.S. Patent No. 5,525,131 to Asano."

For the reasons set forth below, it is submitted that all of the pending claims are allowable over the prior art and therefore, each of the outstanding rejections of the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

On page 2 of the Official Action, the Examiner states that:

Kohno et al teaches a method of encapsulating one plant seed or a plurality of plant seeds in an aqueous gel capsule (Kohno Col. 1 line 1-20); refrigerating the plant seeds under the condition that the plant seeds do not germinate (Kohno Col. 4 line 39); and sowing the plant seeds (Kohno Col. 1 line 21-25 and Col 3 line 27-36).

The Examiner concedes that "Kohno et al does not explicitly teach that the method prevents defective germination or growth of a plant."

The Examiner has accordingly relied upon Skarpaas as teaching that: "a cold period is necessary to break seed dormancy and that prolonged cold treatment enhances germination."

Based upon the teachings of Kohno et al. and Skarpaas, the Examiner takes the position that:

...it would have been obvious...to modify the storage duration through routine tests and experimentation to a length that enhances germination as taught by Skarpaas."

The Examiner's reliance upon Skarpaas is believed to be in error.

Skarpaas is directed to a study of a specific, herbaceous perennial plant that drops "nutlets" into the ocean so that the nutlets float for a very long period of time (several months) in 3% salt water. According to a standard dictionary definition (See [www.webster.com](http://www.webster.com)) a "nutlet" is: "1 a : a small nut b : a small fruit similar to a nut" A "nut" is "1 a (1) : a hard-shelled dry fruit or seed with a separable rind or shell and interior kernel."

It is submitted that Kohno et al.'s radish seed is not at all comparable to the nutlet of Skarpaas or any nut or nutlet since radish seeds do not have hard shells and separable interior kernels.

There is no nexus between the radish seed of Kohno et al. and the nutlet of Skarpaas which supports the Examiner's assumption that the effect of allowing nutlets to float for very long periods of time (several months) in the ocean (3% salt water) would be the same or beneficial (or harmful) if applied to radish seeds.

The only connection that has lead the Examiner to consider combining these two diverse teachings is applicants' own disclosure, because absent such improper hindsight, one skilled in the art would never consider applying the teachings of Skarpaas to Kohno et al.

Certainly the hard, and relatively thick, shells of nuts and nutlets of plants which are native to the beaches of southern Norway are more resistance to that environment than the radish seeds of Kohno et al., so that it cannot be merely assumed that each would be affected in a similar manner by floating in the ocean for extended periods of time. There is simply no basis within the teachings of these references that supports such an assumption.

The Examiner states that "it is notoriously old and well-known in the art of plant husbandry that cold breaks seed dormancy and provides for a more uniform and enhanced germination."

Applicants note that contrary to the Examiner's position, the refrigeration step in claim 1 of their invention is relied upon for vernalization of the plant body.

That is, the refrigeration step hastens the flowering and fruiting of plants and thereby induces a shorter vegetative period. These results which are associated with the present invention are made evidence by applicants' comparative Examples by the data on efflorescence.

Neither Kohno et al. nor Skarpaas suggest such an improvement in the vernalization of the plant body.

Asano has been relied upon by the Examiner as teaching that it is well known to palletize a seed.

The Examiner takes the position that it would have been obvious to apply the gel coating of Kohno et al. to the palletized seed of Asano for "the mechanized and economical distribution of the seeds in the field."

Contrary to the Examiner's position of obviousness, applicants note that it is very difficult to carry out a refrigeration treatment for a palletized seed prior to sowing, because palletized seeds formed with clay materials per Asano would tend to dissolve during the preservation in the cooling solutions of Kohno et al.

Although a gel-coating according to the present invention avoids such problems, it is submitted that the existence of the problem which is not specifically addressed by either Kohno

et al. or Asano would lead one away from the combination which the Examiner purports to be obvious.

That is, fair consideration of the art would render the Examiner's proposed combination of Kohno et al. and Asano non-obvious rather than obvious as the Examiner purports.

Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejection of the claims should hence be withdrawn.

Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

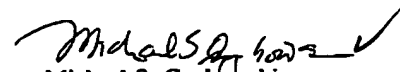
It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

The prior art cited but not relied upon by the Examiner on pages 4-5 of the Official Action has been noted. This prior art is not believed to be pertinent to applicants' claimed invention.

If upon consideration of the above, the Examiner should feel that there remains outstanding issues in the present application that could be resolved, the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 02-0385 and please credit any excess fees to such deposit account.

Respectfully submitted,

  
Michael S. Gzybowski  
Reg. No. 32,816

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